

### **REMARKS/ARGUMENTS**

The non-final Office Action of December 24, 2009 has been carefully reviewed and this paper is Applicants' response thereto. Claims 1-13, 16-37 and 39-40 stand rejected. Claims 14-15 and 38 were previously cancelled. To facilitate prosecution, independent claims 1, 11, 13, 37, 39, and 40, and dependent claims 7, 8, 16-19, 22, 23, and 36 have been amended. New claims 41-48 have been added. The amendments to the claims and new claims 41-51 are supported at least by the written specification as originally filed at paragraphs [179] through [185] (which correspond to paragraphs [0192] through [0199] of the application published as US 2004/0138517).

#### **Rejection under 35 U.S.C. 102(e)/103(a)**

Claims 1-13, 16-19, 21-29, 32, 35-37 and 39-40 were rejected under 35 U.S.C. §102(e) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Whitehurst, U.S. Patent Application No. 2002/0013612 ("Whitehurst").

Claims 30-31 and 33 were rejected under 35 U.S.C. §102(e) as anticipated by or, in the alternative, as obvious over Whitehurst.

Claim 34 was rejected under 35 U.S.C. §103(a) as being unpatentable over Whitehurst.

Claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Whitehurst, in view of Haller, et al., U.S. Application No. 2002/0013613 ("Haller").

Independent claim 1, as amended, recites:

a first external component configured to provide an indication to the implantable component of the presence of the first external component, and to provide at least one feature to the implantable component; and

a first communications channel configured to optionally couple the implantable component and the external component, wherein, in operation, data is transported over the communications channel,

the implantable component configured so that if it does not receive a signal from the first external component within a first period of time, the implantable component continues to support the at least one feature provided by the first external component until a second period of time when the implantable component detects that the first external component is no longer available, the implantable component is configured to operate in the open-loop control mode when it detects that the first external component is no longer available and to automatically switch to a second treatment therapy mode when the first external component is re-coupled to the implantable component through the communications channel, the second treatment therapy mode corresponding to a closed-loop control mode, wherein, in operation, the closed-loop control mode is responsive to the data being transported over the communications channel."

Whitehurst does not teach or suggest the above claimed features. For example, Whitehurst does not teach or suggest an "the implantable component configured so that if it does not receive a signal from the first external component within a first period of time, the implantable component continues to support the at least one feature provided by the first external component until a second period of time when the implantable component detects that the first external component is no longer available."

Nor does Whitehurst teach or suggest an "implantable component is configured to operate in the open-loop control mode when it detects that the first external component is no longer available and to automatically switch to a second treatment therapy mode when the first external component is re-coupled to the implantable component through the communications channel, the second treatment therapy mode corresponding to a closed-loop control mode, wherein, in operation, the closed-loop control mode is responsive to the data being transported over the communications channel" as claimed in claim 1, as amended.

Therefore, for at least the above reasons, Whitehurst fails to disclose, suggest, or teach all the features of amended claim 1. Accordingly, amended claim 1 is patentable over Whitehurst.

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007). Applicants respectfully request that if the §103 rejection is maintained, or if further rejections are set forth, that the Office provide an analysis of obviousness that considers the *Graham* factors so the Applicants may more readily respond to any assertions of obviousness.

**Dependent Claims 2-10, and 41-43**

Claims 2-10 and 41-43, which depend from claim 1, are patentable for at least the reasons that claim 1 is patentable and for the additional features recited therein.

**Claims 11 and 12**

Independent claim 11 recites features similar to the above features of claim 1, thus Whitehurst also fails to disclose at least those features of this independent claim. Therefore, claim 12, which depend from claim 11, is patentable for at least the reasons that claim 11 is patentable and for the additional features recited therein.

**Claims 13, 16-36, and 44-51**

Independent claim 13 recites features similar to the above features of claim 1, thus Whitehurst also fails to disclose at least those features of this independent claim. Therefore, claims 16-36, and 44-51 which depend from claim 13, are patentable for at least the reasons that claim 13 is patentable and for the additional features recited therein.

**Independent Claim 37**

Independent claim 37 recites features similar to the above features of claim 1, thus Whitehurst also fails to disclose at least those features of this independent claim. Therefore, claim 37 is patentable for at least the reasons that claim 1 is patentable and for the additional features recited therein.

**Independent Claim 39**

Independent claim 39 recites features similar to the above features of claim 1, thus Whitehurst also fails to disclose at least those features of this independent claim. Therefore, claim 39 is patentable for at least the reasons that claim 1 is patentable and for the additional features recited therein.

**Independent Claim 40**

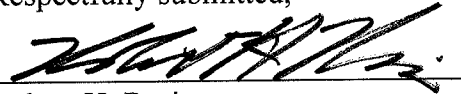
Independent claim 40 recites features similar to the above features of claim 1, thus Whitehurst also fails to disclose at least those features of this independent claim. Therefore, claim 40 is patentable for at least the reasons that claim 1 is patentable and for the additional features recited therein.

**CONCLUSION**

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

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Respectfully submitted,



Robert H. Resis  
Registration No. 32,168  
BANNER & WITCOFF, LTD.  
10 S. Wacker Drive  
Suite 3000  
Chicago, IL 60606-7407  
Direct Telephone: 312-463-5405  
Facsimile: 312-463-5001